In the High Court of Judicature at Madras

Dated: 06/03/2004

Coram

The Honourable Mrs.Justice R.BANUMATHI

Criminal Appeal No. 635 of 1996
and
Criminal Revision Petition No.290 of 1996

C.A.No.635 of 1996

The State represented by
Station House Officer,
Orleanpet Police Station,
Pondicherry. ..Appellant

-Vs-

Udayakumar ..Respondent/Accused.

Crl.R.C.No.290 of 1996:

Ignatious Francis Periera ..Petitioner / P.W.1
in S.C.46/1993.

..vs..

1. Udayakumar ..Respondent No.1/Accused
2. State represented by
Inspector of Police,
Orleanpet Police Station,
Pondicherry. ..Respondent No.2

Criminal Appeal and Criminal Revision Petition filed against the

judgment dated 22.12.1995 made in S.C.No.46 of 1993 on the file of Principal Sessions Judge, Pondicherry.

!For Appellant : Mr.Suryaprakasam,
Public Prosecutor, Pondicherry
in Crl.A.635/1996

^For Petitioner : Mr.C.D.Johnson
for Revision Petitioner in
Crl.R.C.No.290/1996

For Respondent : Mr.K.Sridharan
for Respondent in C.A.635/1996.

:C O M M O N J U D G M E N T

Crl.Appeal No. 635/1996: State has come forward with this Appeal against the Order of Acquittal in S.C.46/1993 on the file of Principal Sessions Judge, Pondicherry. By the Judgment dated 22.12.1995, the learned Principal Sessions Judge, Pondicherry has acquitted the accused of the offences under Sections 498-A and 304-B IPC.

Crl.Revision Case No. 290/1996: Father of deceased - P.W.1 Ignatious Francis Periera has filed this Revision aggrieved against the Order of Acquittal by the trial court acquitting the accused.

2. Common points for determination arise in both Appeal and Revision and hence both were heard together and disposed of by this Common Judgment.

3. For better appreciation of the contentious points urged, we may firstly refer to the common grounds:Deceased Lucy Periera @ Santhakumari (hereinafter referred to as Lucy) and Prosecution side witnesses are related as noted below: P.W.1
Ignatious Francis Periera | |
----------| | |
P.W.2 P.W.8 Lucy Periera (Marshal Periera) (Joe
Periera) @ =P.W.5 Santhakumari
(Ivy Periera)

The accused is a Native of T.R.Pattinam, Karaikal Region and the deceased hailed from Karaikal. P.W.1 - father of Lucy was employed in Railways and the mother of Lucy was employed as Head Nurse in Karaikal. So, the family of P.W.1 lived in Karaikal. The family of the accused is of Hindu Tamil origin while the family of P.W.1 is of Keralist Christian origin. So, basically there is difference in religion, custom and culture between the two families of the accused and the deceased. The accused was a classmate of P.W.2 - Marshal Periera in PUC in Arignar Anna College and thus they were friends. Lucy did her schooling and Plus Two at Karaikal. The accused did his M.B.B.S., Course at JIPMER ending in the year 1986. Lucy was a student with P.W.4 - Sumathi in B.Sc., M.L.T., Course in JIPMER between the period 1983 - 1 986.

4. Marriage - 05.06.1988: The accused and the deceased developed love and friendship and clandestinely they married in 1986. However, according to the Hindu custom and rites, the marriage of the accused and the deceased was celebrated in Mariamman Temple at Veerampattinam on 05.06.1986. P.W.1 - father did not attend the marriage. But he sent his son - P.W.8 - Joe Periera and another son to attend the marriage of Lucy and sent gift of Rs.1,001/=. The marriage was also not to the liking of the family of the accused. So after the marriage, the couple were living separately in Mullai Nagar, Pondicherry.

5. Thus marriage is not an arranged marriage; it was a love marriage mutually arranged by the accused and the deceased themselves. Since the marriage was a love marriage much to the disliking of both the families, there would not have been possibility of demand of dowry in connection with marriage.

6. Demand of Jewels in October - November 1988:- Case of Prosecution is that after the marriage, the accused and deceased visited Karaikal in November 1998 for Deepavali. At that time, deceased asked for some jewels in the presence of the accused. Deceased wanted her father - P.W.1 to present the jewels at the time of Deepavali. When the couple came for Thalai Deepavali, P.W.1 purchased four gold bangles weighing 4 sovereigns, one neck lace weighing 2 sovereigns and one gold ring weighing about 4 grams and presented to deceased Lucy before Deepavali in the presence of the accused and his relatives.

7. Demand of Motor Cycle in December 1989; Deceased and accused came to the house of P.W.1 in 1989 Christmas. The accused wanted a sum of Rs.10,000/= to enable him to purchase a Motor Cycle. During Pongal 1990, P.W.1 paid Rs.10,000/= to the accused, which he raised by way of loan from Indian Bank, Karaikal Branch. From out of which, the accused purchased the Bullet Motor Cycle.

8. Further Demand of Jewels: In February 1990, both the accused and the deceased came to the house of P.W.1. Deceased Lucy told P.W.1 in the presence of the accused that the accused is insisting/under compulsion, to obtain some more jewels to attend the marriages and functions since he happened to be the doctor. P.W.1 purchased four bangles weighing 4 sovereigns and he gave the accused a week later.

9. Demand of Rs.30,000/= to purchase a plot: In August 1990, both the accused and the deceased came to the house of P.W.1 and demanded Rs.30,000/= in order to purchase a plot worth about Rs.50,000/=. P. W.1 promised to arrange for the money. Since Rs.30,000/= would not be sufficient to pay the sale consideration and registration charges, the accused took the jewels of deceased Lucy presented by P.W.1 and accompanied by P.w.8 - Joe Periera, went to Rathna Jewellery, Karaikal to sell the same to raise the funds. On knowing about the same, P.W.1 rushed to Rathna Jewellery and persuaded the accused not to sell the jewels. In September 1990, P.W.1 withdrew Rs.25,000/= from the Fixed Deposit in Indian Bank, Karaikal and adding the same with Rs.5,000 /=, he gave Rs.30,000/= to the accused through P.W.8 - Joe Periera. Later, P.W.1 was informed that from out of that amount, the accused had purchased a plot in 100 Feet Road.

10. Demand of fridge: In August 1991, both of them came to the house and Lucy told P.W.1 that the accused is insisting that she should get a fridge from him. Two days later, P.W.1 pledged the jewels of his wife and availed Rs.11,000/= as loan from Indian Overseas Bank, Velankanni and purchased two Godrej fridges and presented one to Lucy and another to his son P.W.2 - Marshal Periera.

11. Demand of Rs.50,000/=: In December 1991, deceased Lucy told P.W.1 that the accused is insisting to obtain Rs.50,000/= from P.W.1 to construct a house in the plot bought at 100 Feet Road. The accused was also then present. P.W.1 expressed the difficulties in raising money. Since P.W.1 rebuked the accused and the deceased in demanding more money, thereafter the accused did not visit the house of P.W.1.

12. Sometime prior to the occurrence, Lucy visited the house of P. W.1 and she appeared sad. When P.W.1 asked Lucy, the deceased told him that the accused had illicit relationship with one Nurse by name Jeanee D' Arc Mary of Villianoor Hospital. Deceased Lucy told P.W.1 that she saw the accused and the said Jeanee D'Arc Mary in a compromising position in the quarters of the accused at Villianoor Hospital. P.W.1 advised the deceased not to quarrel with the accused and to get along with him.

13. Occurrence - Suicide by hanging: The couple were living separately in Mullai Nagar, Pondicherry. On 22.05.1992, the accused left for duty. Between 5.00 PM - 22.05.1992 and 08.30 AM - 23.05.1992 the deceased

committed suicide by hanging inside the house. The door was locked inside when the accused returned from the duty. The death is unnatural one. P.W.21 - Dr.V.Srinivasan conducted post mortem. P.W.21 gave his provisional opinion that Lucy died of Asphyxia due to hanging. Ex.P-23 is the final opinion issued by the doctor that death of Lucy was due to hanging.

14. Registration of case for Suspicious death: The accused lodged Ex.P.18 - Complaint to Orleanpet Police Station stating that his wife was found dead when he returned from duty on 23.05.1992. Since the death was within seven years of marriage, case of Suspicious Death was registered in Crime No.153/1992 of Orleanpet Police Station under Section 174 of Crl.P.C. The First Information Report - Ex.P-19 was sent to the Tahsildar - P.W.17 for inquest. P.W.17 - Tahsildar received copy of the First Information Report and held inquest. Ex.P-7 is the Inquest Report. After the initial inquest, P.W.17 has concluded that the death was due to suicide by hanging out of frustration since Lucy was not having the child. On 25.05.1992, P.W.2 - Marshal Periera sent Ex.P.4 - Compliant expressing suspicion and foul play in the death of his sister - deceased Lucy. Upon receipt of that Complaint, P.W.17 sent his report Ex.P-11 to the Orleanpet Police to further investigate. Thus the case which led to the present Appeal.

15. Alteration of the case: Ex.P.11 - Report of the Tahsildar was received through Superintendent of Police (North), Pondicherry by P. W.20 - Sub Inspector of Police, Orleanpet. On that basis, the case was altered into under Sections 304-B, 498-A IPC under Ex.P.20 - First Information Report on 09.07.1992. On 10.07.1992, the case file was handed over to Superintendent of Police (North), Pondicherry for further investigation. Witnesses were examined by him.

16. Arrest of the accused:- On the instructions of Superintendent of Police, P.W.19 - Sub Inspector of Police arrested the accused on 07.08.1992. P.W.22 - Investigating Officer interrogated the accused. As per the direction of Investigating Off - Superintendent of Police, the accused was remanded to judicial custody through P.W.20.

17. Upon completion of investigation, charge sheet was filed against the accused on 18.01.1993 for Dowry Death and Demand of Dowry and cruelty under Sections 304-B and 498-A IPC.

18. To substantiate the charges against the accused, Prosecution has examined P.Ws.1 to 22. Exs.P-1 to P-24 are marked. M.Os.1 to 4 were remanded to Court. When the accused was questioned under Section 31 3 of Crl.P.C., he denied ill-treatment and dowry demand. He filed a statement in writing stating that he had purchased the plot by availing loan from the Cooperative

Society. To substantiate his defence, the accused produced four documents.

19. Upon consideration of the evidence and the defence, the learned Sessions Judge found the accused not guilty on the following findings;

(i) the marriage between the accused and the deceased being a love marriage. Since the accused did not have any help from his parents, he would have naturally approached his parents-in-laws for help to lead a comfortable life with the deceased; (ii) presentation of jewels, Rs.40,000/= in cash and a purchase of fridge were only voluntary by P.W.1 - father of the deceased out of his love and affection towards his daughter and to help his daughter to live amicably with her husband / the accused. No proximity between the time of presentation of jewels and cash and the death; (iii) any occasional beating is only normal in matrimonial life which would not amount to dowry harassment or cruelty within the meaning of Section 498 A IPC; (iv) the Prosecution witnesses have the tendency to improve their version with additions and improvements and are highly interested in securing the conviction for the accused. Interlia elaborately going through the allegations of foul play made by P.W.2 - Marshal Periera in his Complaint (Ex.P-4) and referring to the medical evidence and opinion of Tahsildar - P.W.17, the learned Sessions Judge concluded that it is a case of suicide and not a case of dowry death. On the above findings, the learned Sessions Judge acquitted the accused of the offences under dowry harassment and dowry death.

20. Aggrieved over the same, the State has preferred the Appeal and P.W.1 - father of deceased Lucy has filed the Criminal Revision case.

21. C.A.No.635/1996:- Assailing the findings, the learned Government Advocate, Pondicherry has submitted that sufficient materials are forthcoming from the evidence of P.W.1 - father of the deceased and P.Ws.2 and 8 - brothers of the deceased for dowry harassment and cruelty and the trial court erred in brushing aside the same and finding that demand of dowry and harassment is not proved.

22. Drawing the attention of the court to the evidence of P.W.13, a co-employee of the deceased, it is submitted that the ill-treatment is well proved by the evidence of P.W.13 and by the evidence of P.W.3 and the trial court erred in lightly brushing aside the same. Laying emphasis upon Exs.P-1 to P-4 coupled with the evidence of P.Ws.1, 2 and 8, the learned Government Advocate submitted that the same would conclusively prove the demand of dowry. It is further submitted that the trial court committed serious and substantial error in not appreciating the overwhelming evidence and the findings are unreasonable and perverse, which need to be reversed. Further placing reliance upon 2003 SCC (Crl.) 271, the learned Government Advocate submitted that though the Court has acquitted the accused under Sections 498-A and 304-B IPC, the trial court ought to have alternatively convicted the accused for

abetment to commit suicide under Section 306 IPC.

23. Crl.R.C.290/1996:- Adopting the arguments of the Government Advocate, Pondicherry, the learned counsel appearing for the Revision Petitioner / P.W.1 - Ignatious Francis Periera submitted that the findings and reasonings of the trial court are erroneous, which need to be reversed and the accused to be convicted for Dowry Death and cruelty and Dowry Harassment.

24. Countering the arguments of the State and taking me through the evidence, the learned counsel for the accused submitted that the trial court has rightly found that the jewels, cash and fridge given by P.W.1 to Lucy were only out of affection. Assailing the reliability of P.Ws.1 and 2, the learned counsel submitted that both the witnesses have a tendency to make improvements. Much reliance is placed upon the documents filed by the accused in support of the contention that the accused purchased the house plot by obtaining permission from Directorate of Health and Family Welfare Services, Pondicherry and availing loan from the Pondicherry Gazetted Officers' Cooperative Credit Society Limited and there could not have been any demand of dowry for purchase of plot. Evidence of P.W.3 is seriously assailed on the ground that she is already estranged from her husband - brother of the accused and the trial court had rightly not taken note of her evidence. Pointing out the inconsistencies between the evidence of P.Ws.13 and 14, the learned counsel further submitted that the evidence of P.W.13 that the accused slapped the deceased and one such stray instance would prove the ill-treatment and cruelty. It is submitted that in any event, in an Appeal against acquittal, the Appellate Court cannot interfere with the order of acquittal unless the reasonings of the trial court suffer from perversity and infirmities.

25. Upon careful re-assessment of the evidence, materials on record, impugned judgment of the trial court and submissions of both sides, the following common points arise for consideration in this Appeal and Revision;(i) Whether the Prosecution has proved that the deceased was subjected to cruelty or harassment in connection with demand for dowry by the accused "soon before her death"? (ii) Whether the trial court was right in finding that there was no cruelty or harassment "soon before her death"? (iii)Whether the reasonings and findings for acquittal suffer from any serious and substantial error warranting interference ?

26. Before adverting to the evidence and the contentious points urged, we may refer to the factors in the light of which the merits of the contentious points are to be considered. The accused is a Hindu. The deceased is a Christian. They developed love and friendship even during the student days. Clandestinely they got married in 1986. For legalising the same, their marriage was celebrated in a Hindu Temple according to Hindu rites at Veerampattinam on 05.06.1988. P.W.1 and his family did not reconcile to the marriage. P.W.1 sent P.W.8 - Joe Periera and another son to the marriage along with the gift of Rs.1001/= to be presented to Lucy. The marriage being

the love marriage, absolutely there is no possibility of demand of dowry in connection with the marriage.

27. Case of Prosecution as setforth through P.Ws.1 and 2 is that deceased was subjected to cruelty and ill-treatment in:(a) demand of jewels; (b) demand of money for purchase of Motor Cycle and Plot; (c) demand of a fridge; (d) demand of money for construction of the house.

28. Before adverting to the evidence on the alleged demand and appreciation of evidence by the trial court, certain important aspects need to be referred to.

On 24.05.1992 between 8.00 AM and 10.30 AM, P.W.17 - Tahsildar conducted inquest. During the inquest, P.W.1 - Ignatious Francis Periera and P.W.4 Sumathi, who is the close friend of deceased Lucy, were examined. Upon their examination and other witnesses, P.W.17 formed opinion that the death was due to frustration since deceased Lucy was not having the child. Opinion of P.W.17 - Tahsildar is this:@,we;Jgl;lth; kpft[k; ey;yth; vd;Wk; kzk; Koj;jgpd; fzth; cjaFkhUld; ey;y thH;f;if elj;jp te;jth; vd;Wk;. fy;ahzkhfp MW tUlk; fHpe;j gpd; g[k; FHe;ij gpwf;fhj fhuzj;jhy; kdKile;J ,e;j jw;bfhiyf;F Kad;W ,Uf; fyhk; vd;W re;njfg;gLk;goahf cs;sJ vd;W ,';F FGkpapUe;j g";rhaj;jhh;fs; jdpj;jdpnaa[k; xUkpj;Jk; j';fs; fUj;Jf;fisj; bjhptpj;jhh;fs;@/

29. During inquest, P.W.1 was examined. In his statement before Tahsildar, P.W.1 had stated that he had voluntarily given jewels to Lucy; paid money for purchase of house site and Motor Cycle. It is relevant to refer to the statement of P.W.1 recorded by the Tahsildar as ,tSf;F kzk; Koe;jgpd; eiffs; bra;J bfhLj;J cs;nsd;/ Fsph;rhjd bgl;o th';fp bfhLj;J cs;nsd;/ tPl;Lkid th';ft[k;. g[jpa nkhl;lhh; irf;fps; th';ft[k; gzk; bfhLj;J cjtpa[s;nsd;@/ Further, P.W.1 has stated that Lucy might have committed suicide out of frustration for not having the child. That part of the statement before the Tahsildar reads:,e;j rhtpw;F ahh; fhuzk; vd;W bjhpatpy;iy/ v';fSf;F vth; kPJk; re; njfk; ,;y;iy/ FHe;ij ,y;iyna vd;w ftiyahy; ,e;j jpOh; Kot[f;F ngha; ,Uf;fyhk; vd;W re;njfg;gLfpnwd;@

30. During inquest, P.W.4 Sumathi, close friend of deceased Lucy was also examined. She has also stated before the Tahsildar that deceased Lucy never complained about any demand of dowry nor illtreatment by the accused. P.W.4 has further stated that deceased Lucy was sad since she was not procreating. Thus in the course of inquest by P. W.17 - Tahsildar, nothing was made out to book the accused under Sec. 304-B IPC or under Section 498-A IPC or under Sec. 306 IPC. The conclusion of the inquest was only to the effect that due to honesty Lucy committed suicide by hanging. Since the death was concluded to be suicide by hanging and nothing was made out to book the accused for the offences, the dead body of Lucy was handed over to the accused to complete the last rituals. P.W.1 - father of the deceased was present all

through the inquest and he had also witnessed all the formalities. It is not as if P.W.1 is too na□ve or a simple rustic. He was then employed in Railways and must have been quite conscious of what was happening during inquest. Thereafter, on 25.05.1992 P.W.2 - brother of the deceased sent Ex.P.4 - Complaint levelling allegations against the accused.

31. In Ex.P.4 - Complaint, P.W.2 referred to the conduct of the accused ill-treating Lucy in demand of dowry by way of jewels and cash. P.w.2 has also referred to the illicit relationship of accused with one Mary Jacquiline. In his Complaint - P.W.2 suspected that some kind of foul play had taken place to get rid of Lucy knowing fully well that there is no one in Pondicherry to protect her. Thus in Ex. P-4, P.W.2 has emphatically stated about "foul play" that had taken place to get rid of Lucy and P.W.2 sought for Re-Enquiry in the matter. Thus the tendency of P.Ws.1 and 2 in making improvements is made clear by their conduct.

32. P.Ws.1 and 2 have spoken about the dowry demand and the alleged cruelty to deceased Lucy. As discussed earlier, love marriage was not to the liking of the family of the deceased though subsequently they reconciled. They lost their loved one. Their love and affection for the deceased would naturally create a psychological hatred towards the accused, whom they consider instrumental for the death of Lucy. In view of their hatred towards the accused, the relatives of Lucy would have a tendency to exaggerate or give coloured version of facts. Therefore, the Court is to examine their evidence with great care and caution. This is all the more so, in an Appeal against Acquittal.

33. At this juncture, we may also point out certain observations emanating out of the personal notions of the learned trial Judge. While analysing the evidence of P.Ws.3 and 12, who had stated that the accused used to beat the deceased worse than a 'rickshaw puller', the learned Sessions Judge observed, "Regarding the alleged beating, I have to point out that, in India, it is not an uncommon feature in day-to-day marital life that the husband beats the wife. Such beating by the husband of his wife, is usually seen when there is economic pre-dominance by the husband over his wife and when the wife is helpless, both economically and socially. On the other hand, we have also heard of the wife beating the husband when economically she is stronger than her husband. So, the society had come out with an old saying @mof;fpw ifjhd; mizf;Fk;@/

Instead of analytically examining and assessing the evidence, the learned Sessions Judge seems to have imported his own notion as to the matrimonial life and the domestic happenings. This personal notion of the learned Judge is vague, unsupported by any materials. In my view, the trial court ought not to have imported that reasonings in the judgment. The trial court ought to have the evidence in the light of the essential ingredients of section 304-B IPC. Merely because the trial court has imported its personal notion, that

alone cannot be the reason for interfering with the finding of the acquittal.

34. It is well settled, the Appellate Court is first required to seek an answer to the question 'Whether the findings of the trial court are palpably wrong, manifestly erroneous and demonstrably unsustainable'. Upon evaluation of proved facts, if the Appellate Court finds that the acquittal judgment is perverse or based on misreading of facts or law or the findings are tainted with non-application of mind, the Appellate Court can interfere with the impugned order of acquittal.

35. Keeping in view the well settled principle of law that the order of acquittal not to be set aside unless it is found to be patently wrong and wholly unsustainable, I have carefully perused and reassessed the entire evidence.

36. For convicting the person under Section 304-B IPC, the following essentials must be satisfied; (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of her marriage; (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband; (iv) such cruelty or harassment must be for or in connection with demand for dowry; (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

37. A bare reading of section 304-B IPC would show that when a question arises whether a person has committed the offence of a dowry death of a woman what is necessary is that it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected to cruelty or harassment for or in connection with the demand of dowry. If that is shown, the court shall presume that such a person has caused the dowry death. It is imperative, for invoking the legal presumption, to prove that "soon before her death", she was subjected to such cruelty or harassment.

38. The conduct of demand of dowry may be spread over for a period of time. But the crucial point is Whether the deceased was subjected to cruelty or harassment "soon before her death". Proximate and live link between the effect of cruelty based on dowry demand and consequential death is required to be proved by the Prosecution. The demand of dowry, cruelty, harassment and date of death should not be remote in time to be linked with the death.

39. To appreciate the findings of the trial court, it is necessary to analyse the evidence of P.Ws.1, 2 and 8 with regard to the instances of demand of jewels and others.

40. Demand of Jewels - October - November 1988: After the marriage, the accused and the deceased came to the house of P.W.1 one week prior to Thalai Deepavali. At that time, in the presence of the accused, Lucy asked P.W.1 some jewels, which, according to P.W.1, was at the instigation of the accused. P.W.1 purchased four gold bangles weighing 4 sovereigns at Fashion Jewellery, Ernakulam. He also purchased one gold necklace weighing two sovereigns and four grams of gold ring at Rathna Jewellery at Karaikal. The night before Deepavali, P.W.1 went to the house of the accused at T.R.Pattinam and gave the jewels to Lucy in the presence of the accused, his mother and brother.

41. Second Demand of Jewels - February 1990: In February 1990, accused and deceased came to the house of P.W.1. At the instance of the accused / under his compulsion, Lucy insisted for more jewels stating that the accused happened to be a Doctor and that she has to wear more jewels according to his status. A week later, P.W.1 gave Lucy four bangles weighing 4 sovereigns which he bought from Fashion Jewellery at Ernakulam.

42. Though it is stated that Lucy was insisting jewels at the instance of the accused, in his evidence P.W.1 has not stated anything about the ill-treatment or cruelty. The marriage being a love marriage, the accused had fallen out from his family. During 1988-1990, there was no confrontation between the accused and his in-laws. In that circumstance, to enable Lucy to live comfortably with her husband, P.W.1 either might have willingly given the jewels or when asked for by Lucy, P.W.1 might have given the jewels to his daughter. Referring to absence of any confrontation between the accused and the in-laws, the trial court found that there was no ill-treatment or cruelty in demand for jewels. This finding of the trial court cannot be said to be perverse or wrong; more so, in the light of subsequent conduct of the parties in cordially maintaining their relationship.

43. Demand of Motor Cycle: In December 1989, the accused and the deceased Lucy came to the house of P.W.1 for celebrating Christmas in the year 1989. At that time, the accused told P.W.1 that he had applied for a loan for purchase of a Motor Cycle, for which he required some amount and demanded P.W.1 a sum of Rs.10,000/= in the presence of Lucy and his son P.W.8 - Joe Periera. The accused also requested P. W.8 to ask P.W.1 to help him to get a Motor Cycle. P.Ws.1 and 8 have spoken about the demand of the accused for Motor Cycle. According to P.W.1, he has availed loan of Rs.10,000/= from out of the Fixed Deposit lying in the Indian Bank, Karaikal Branch and gave it to the accused. The accused had purchased the motor cycle from out of the amount of Rs.10,000/=.

44. Evidence of P.W.1 that he availed loan of Rs.10,000/= from the Fixed Deposit is strengthened by Ex.P-2. Under Ex.P-2, Indian Bank, Karaikal Branch has certified advancement of amount of Rs.10,919-95 as loan to Mr.I.F.Periera, 1, Church Street on 18.01.1990 against his RIP Deposit Receipt

No.362876 dated 01.06.1988 and Receipt No.362874 dated 01.06.1988 both maturing on 01.06.1990. While considering the evidence of P.Ws.1 and 8, the learned Sessions Judge found that the accused was only persuading P.W.1 to pay Rs.10,000/= to purchase motor cycle before the Budget. Lest there would be price hike of the motor cycle after the Budget and that he wanted to sell the jewels by purchasing the Motor Cycle before the Budget was announced. In the light of the conduct of the parties and that the accused and the deceased were having separate residence, the trial court found that P.W.1 paid the amount for purchase of Motor Cycle to meet the basic necessities of a newly married couple and to make them comfortable. The trial court further stated that for a newly married couple, (i) a place to live in, (ii) jewels to wear, and (iii) a vehicle for transport are the normal and basic requirements. The trial court was of the further view that the marriage being the love marriage, parents of the deceased helped the accused to have that normal and basic requirements. This finding of the trial court is based upon the evidence and the conduct of the parties and the trial court cannot be said to have misappreciated the evidence regarding the payment of money for purchase of Motor Cycle.

45. Purchase of plot and demand of Rs.30,000/=. Before referring to the evidence of P.W.1 with regard to payment of Rs.30,000/= for purchase of plot by the accused, we may refer to Document No.1 (Sale Deed dated 19.11.1990) filed by the accused and other documents. As per the Sale Deed, the accused had purchased the wet land measuring 4 kuzhies, 2 2/3 Veesam situated at Cad.No.66, R.S.No.23/4 Mudaliarpet Olandai Village for a consideration of Rs.16,000/= from one V. Manickam. For purchase of the above said plot, Directorate of Health and Family Welfare Services, Pondicherry had granted permission to the accused under Rule 18(2) of C.C.S. (Conduct) Rules 1964 (Document No.2).

46. For purchasing of the plot, the accused has availed loan of Rs.38,000/= in June 1990 from The Pondicherry Gazetted Officers' Cooperative Credit Society Limited. Document No.3 filed by the accused is the Certificate issued by The Pondicherry Gazetted Officers' Cooperative Credit Society Limited certifying the sanction of the loan. Document No.4 is the Pass Book issued to the accused evidencing the Thrift Deposit Amount and the amount paid by him. Thus from Documents 1 to 4 filed by the accused, it is clear that the accused himself had purchased the plot by availing the loan from the said Cooperative Credit Society Limited.

47. Case of Prosecution is that in August 1990, accused and deceased came to the house of P.W.1 and accused demanded Rs.10,000/= to purchase a plot at 100 Feet Road. The accused insisted for immediate payment since he wanted immediate registration of the plot. According to P.W.1, in the month of September 1990, he withdrew a sum of Rs.25,000 /= from the Fixed Deposit and along with another sum of Rs.5000/=, gave in total a sum of Rs.30,000/- to P.W.8 for being given to the accused for purchase of plot. Later, Lucy told P.W.1 that from out of that amount given by P.W.1, the accused had purchased

plot at 100 Feet Road.

48. Evidence of P.W.1 is sought to be strengthened by Ex.P-3, where P.W.1 has withdrawn the amount on the Short Term Deposit which matured on 01.09.1990. Short Term Deposit Receipt No.355063 Folio STD 17/139 dated 19.07.1990 for Rs.25,000/= was in the name of Mrs.Plyamma Ignatious Periera & Mr.I.F.Periera to be matured on 01.09.1990. On maturity, it was closed on 01.09.1990 and credited to the Savings Bank Account No.7097. That amount of Rs.25,000/= was withdrawn on the same day - 01.09.1990.

49. Evidence of P.W.1 that he paid amount of Rs.30,000/= to the accused through P.W.8 is sought to be corroborated by the evidence of P.Ws.2, 5 and 8 that the accused demanded through the deceased that he wanted Rs.30,000/= to defray the expenses of purchase of a plot. In his evidence, P.W.8 has stated that for rais ing money for purchase of plot, the accused went to the Jewellery shop for selling the jewels and at that time, P.W.1 came to Rathna Jewellery and saw the accused receiving the cash by selling the jewels. It was thereafter, P.W.1 told the accused that he would arrange for the sale consideration from the amount of Fixed Deposit Receipt standing in the name of his wife Mrs.Plyamma Ignatious Periera and his name, which matures in September 1990 and thereafter the accused returned the cash to the jewellery shop and returned home with the jewels. Further, according to P.W.8 , in 1990 P.W.1 withdrew a sum of Rs.25,000/= from the above said FDR and by raising another sum of Rs.5000/=, P.W.1 gave him a total sum of Rs.30000/=, which he paid to the accused at his house at Mullai Nagar, Pondicherry. The deceased Lucy also wrote to P.W.1 a letter about the purchase of the plot near 100 Feet Road.

50. Though P.w.1 has stated that he paid the consideration for purchase of plot, it does not fit in with Documents 1 to 4 filed by the accused. The sale consideration for the sale itself was only Rs.16,0 00/=. The accused himself had raised the loan of Rs.38,000/= from the Pondicherry Gazetted Officers' Cooperative Credit Society Limited. While so, it is quite improbable that the accused would have demanded any further amount for purchase of plot. The learned Sessions Judge proceeded to consider on the footing that normally Sale Deeds are executed for lesser consideration and that Document No.1 Sale Deed might have been executed for a higher amount than Rs.16000/= quoted in the Sale Deed.

51. The FDR was closed only on maturity and not pre-maturely closed. On the same day of maturity - 01.09.1990, the amount of Rs.25,000/= was credited to the S.B.Account No.7097 and the amount was withdrawn on the same day. Except the interested version of P.Ws.1 and 8, there is no evidence showing that the amount was paid to the accused. If really the huge amount of Rs.30,000/= was paid through P.W.8, anyone family members of P.W.1 would have been a party in the sale transaction either by attesting the document or being present at the time of execution of the Sale Deed; but that was not to be so.

On that premise, the learned Sessions Judge analysed the evidence of P.Ws.1, 2, 5, and 8 and found that the conduct of the accused in asking for money for purchase of plot was neither high handed nor amounting to cruelty. From the tenor of evidence of P.Ws.1 and 8, the trial court was of the view that the accused was only persuasive in approaching the parents-in-law in seeking their help. The learned Sessions Judge cannot be said to be wrong in observing that the amount even if so paid was only to help the accused and deceased in getting the plot and get themselves settled in life. Further on payment of this amount also, no evidence of any ill-treatment or cruelty to Lucy is forthcoming. The finding of the trial court that there was no ill treatment meted out to Lucy on this score is neither erroneous nor perverse, warranting interference.

52. Purchase of Fridge: In August 1991, both the accused and deceased came to the house of P.W.1. Deceased Lucy told P.W.1 that the accused is insisting that she has to get a fridge from her parents house. Two days later, P.W.1 raised jewel loan of Rs.11,000/= from Indian Overseas Bank, Velankanni and purchased two Godrej fridges, one was given to Lucy and another fridge to P.W.2 - Marshal Periera. Ex.P-1 is the Certificate issued by the Indian Overseas Bank evidencing the Jewel Loan bearing No.195/91 of Rs.11000/= on 13.08.1991 to Mr.I.F. Periera(P.W.1). Even in the alleged demand for the fridge, deceased Lucy complained of no ill treatment or cruelty. She only asked for a fridge in the presence of the accused. P.W.1 obtained jewel loan and purchased two fridges one for Lucy and another for P.W.2. On this aspect, while appreciating the evidence of P.Ws.1 and 2, the learned Sessions Judge commented upon the conduct of P.W.1 that the father was fair and even-minded in being helpful to all his children in purchasing two fridges - one given to Lucy and another one to P.W.2. The appreciation of evidence and the finding on this aspect is neither opposed to the evidence on record nor is unreasonable.

53. Before proceeding to consider the last demand in December 1991, it is appropriate to point out that all the above alleged demands are between the period 1989 - 1990. Those alleged demands are too remote in time to be connected to the occurrence in May 1992.

54. Demand of Rs.50,000/= in December 1991:- The only demand which perhaps may appear to have slight proximity to the occurrence is the alleged demand of Rs.50,000/= in December 1991, which is about six months prior to the occurrence. In his evidence, P.W.1 has stated that in December 1991, both accused and Lucy came to the house for the Christmas and at that time, Lucy told him that the accused is insisting to obtain a sum of Rs.50,000/= to construct a house in the plot at 100 Feet Road. That demand was in the presence of the accused. P. W.1 retorted expressing his difficulty. P.W.1 also asked the accused and the deceased as both of them are earning members and could raise their own funds. Deceased Lucy replied saying that the accused had to send Rs.1300 - 1500 to his father at T.R.Pattinam and that they could not raise the money by themselves for construction of house. Even

according to P.W.1, this request for payment of Rs.50,000/= was turned down by him. According to P.W.1, such demand was made by the accused under the impression that his retirement was in February 1992, whereas his actual retirement was in February 1993. According to P.W.1, since the demand of the accused was not met, the accused stopped coming to the house thereafter.

55. The accused had denied all the above allegations. Like in other circumstances, here again absolutely no evidence showing that the accused had treated Lucy cruelly or harassed her in insisting to get amount of Rs.50,000/= in order to construct a house in the plot at 100 feet Road. The trial court considered this aspect that the accused was only making a request for payment of Rs.50,000/= and it would not amount to dowry harassment. This finding is neither unreasonable nor erroneous when considered in the light of averments made in Ex.P-4 . In his complaint (Ex.P-4), P.W.2 - Marshal Periera has only stated, "Recently my sister asked me to request our father to give her Rs.50,000/= on his retirement to help her in starting the construction of her house".

In Ex.P-4, P.W.2 has only stated that the accused was compelling Lucy to get money from the father (P.W.1) under one pretext or other. No allegations of dowry harassment or cruelty are made in Ex.P-4.

56. No convincing evidence is forthcoming on cruelty or dowry harassment excepting one stray incident spoken to by P.W.13 - Natarajan. P.W.13 was working as Lab Attender, where Lucy was working as Lab Technician in the Blood Bank, M.S.Department. According to P.W.13, while he was going to get coffee from the canteen, he saw the accused and the deceased standing near the Cloak Room and at that time, the accused slapped the deceased twice. P.W.13 questioned the accused and the accused remained silent. According to P.W.13, he immediately informed the same to P.W.14 - Suguna, who was then working as LDC (Lower Division Clerk) in M.S.Department. Evidence of P.W.14 is contrary to the evidence of P.W.13. P.W.14 has not supported the Prosecution case and she was treated hostile. She pleaded ignorance about any happening to her knowledge nor being informed by P.W.13. Evidence of P.W.13 refers only to one incident. In the view of the trial court one such single instance would not amount to cruelty. The trial court cannot be said to be on the wrong premise in concluding that such stray incident would not amount to cruelty. Cruelty is a course of conduct persisting for a period. Cruelty cannot be restricted to a particular instance. It cannot be concluded that the Prosecution has proved the cruelty on this stray instance. The appreciation of evidence and the finding of the trial court that no cruelty or dowry harassment is made out do not suffer from any serious or substantial error. There is no misappreciation of evidence and the findings cannot be termed unreasonable.

57. P.W.3 - Poongavanam is the brother's wife of the accused, who is estranged from her husband. P.W.3 has stated that on her birthday in June

1989, accused and the deceased went to her house and the deceased complained to her that the accused is beating her worse than a " rickshaw puller". P.W.12 - Chelladurai is a Lab Technician, then working along with the deceased Lucy. According to P.W.12, Lucy informed him that the deceased used to beat her worse than a "rickshaw puller". P.W.12 has not stated about the year and the month. However, the evidence of P.Ws.3 and 12 that the deceased told them that the accused beat her is long prior to the occurrence. Further evidence of P.Ws.3 and 12 is not clear as to the reason for such beating. Evidence of P.Ws.3 and 12 is weak and cannot be connected to the 'demand of dowry' nor to the death in May 1992.

58. On the alleged demand of Rs.50,000/= in December 1991, the trial court found that there is no proximity between death and this demand. For its finding, the trial court referred to AIR 1984 SC 1622. In the said decision, the Supreme Court held that the proximity of time of dowry demand and the death would depend upon the facts and circumstances of the case. Referring to the decision, the trial court found that there is no proximity between the alleged demand in December 1991 and the death. The definite finding of the trial court that proximate and live link between the alleged effect of cruelty based on demand of money and consequential death is based upon the facts and evidence.

59. By careful consideration of the evidence, the immediate cause to disturb mental equilibrium appears to be the illicit relationship of the accused with one staff nurse Jeanee D' Arc Mary. It is brought on record that sometime prior to the death, the accused was seem to be moving close to the said Jeanee D' Arc Mary. P.W.1 testified that when Lucy visited the house after December 1991 she was sad. According to P.W.1, when he asked him the reason for her sadness, she told him that he saw the accused and the said Jeanee D' Arc Mary in a compromising position in the quarters of the accused and that Lucy rebuked the said Jeanee D' Arc Mary for her illicit intimacy with the accused. According to P.W.1, later the accused got transferred to Pondicherry and the said Jeanee D' Arc Mary also got transferred to Maternity Hospital, Pondicherry.

60. P.W.1 also testified that in January 1991 he went to Pondicherry for re-admission of his wife at JIPMER. Since repairs were undertaken in the quarters of the accused at Villianoor, they have stayed in the quarters of the said Jeanee D' Arc Mary. At about 4.00 PM the accused and Jeanee D' Arc Mary went to the Hospital at Villianoor. At about 7.30 PM, when P.W.1 peeped into the hall of the hospital, he saw Jeanee D' Arc Mary sitting on the table putting her hand on the shoulder of the accused. On that night, the accused returned to the house very late. When asked by P.W.1, the accused informed him that he was attending to a 'poison case'. This evidence of P.W.1 was disbelieved by the trial court on the ground that there was no immediate reaction on the part of P.W.1. Even if we accept the evidence of P.W.1 that

accused had any such illicit intimacy with Jeanee D' Arc Mary and their close moving, it must have caused stress and mental strain in the mind of Lucy. But to attract the ingredients of Section 304-B IPC, the cruelty must be in connection with demand of dowry. Any mental strain caused otherwise would not fall within the essential ingredients of Section 304-B IPC. The learned Sessions Judge rightly referred to the decision in 1993 Crimes Vol.II, page 139 that coming home late in the evening after visiting the girl friends would not constitute cruelty within the meaning of Section 498-A IPC. Considering the essential ingredients of Section 304-B IPC, this Court does not find any ground to take a different view.

61. Onbehalf of the Prosecution and the Revision Petitioner, much reliance is placed upon K.PREMA S.RAO ..vs.. YADLA SRINIVASA RAO (2003 SCC (Crl.) 271). In support of their contention that even if the evidence and materials are not sufficient to find the accused guilty under Section 304-B IPC, from the evidence on record, the trial court ought to have convicted the accused under Section 306 IPC - abetment to commit suicide. As in the case before the Supreme Court, in the instant case also two charges are framed - 304-B IPC and Section 498-A IPC. On the basis of the above decision, it is contended that even if the charge under Section 306 IPC is omitted to be framed, the trial court ought to have convicted the accused under Section 306 IPC as all the essential ingredients necessary for convicting the accused under Section 306 IPC are well proved. Maintaining the conviction and sentence of accused No.1 under Sec.498-A IPC and further convicting him under Section 306 IPC in the above decision, the Supreme Court held thus; "Mere omission or defect in framing charge does not disable the criminal court from convicting the accused for the offence which is found to have been proved on the evidence on record. The Code of Criminal procedure has ample provisions to meet a situation like the one before us. From the statement of charge framed under Section 304-B and in the alternative Section 498-A IPC, it is clear that all facts and ingredients for framing charge for offence under Section 306 IPC existed in the case. The mere omission on the part of the trial Judge to mention Section 306 IPC with Section 498-A IPC does not preclude the court from convicting the accused for the said offence when found proved. In the alternate charge framed under Section 498-A IPC, it has been clearly mentioned that the accused subjected the deceased to such cruelty and harassment as to drive her to commit suicide. The provisions of Section 221 Crl.P.C.take care of such a situation and safeguard the powers of the criminal court to convict an accused for an offence with which he is not charged although on facts found in evidence, he could have been charged for such offence. The provision of sub-section (2) of Section 221 read with subsection (1) of the said section can be taken aid of in convicting and sentencing Accused 1 of offence of abetment of suicide under Section 306 IPC along with or instead of Section 498-A IPC.

62. In the above case, in the light of proved cruelty and harassment, that observation was made by the Apex Court and convicting A1 - husband for 306 IPC in addition to Section 498-A IPC. In this case, no proof of cruelty or harassment soon before death is made out. The above decision cannot be

applied to the case in hand.

63. There is no misreading of evidence. The reasonings for acquittal are reasonable and based on materials on record. There is nothing to suggest that the acquittal is unreasonable warranting interference. The Appeal preferred by the State and the Revision filed by P.W.1 against the acquittal of the accused are bereft of merits and are bound to fail.

64. C.A.No.635/1996: For the reasons stated above, this Appeal preferred by the State against the acquittal of the accused is dismissed. 65. Crl.R.C.No.290/1996:- This Revision preferred by P.W.1 - Ignatious Francis Periera against acquittal of the accused is dismissed.

Index:Yes.
Internet : Yes.

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To

1. The Principal Sessions Judge, Pondicherry.

2. The Inspector of Police, Orleanpet Police Station, Pondicherry.

3. The Public Prosecutor, Pondicherry.

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